

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

PAUL D. THIBODEAUX, #1539087,

Plaintiff,

v.

WARDEN KEMP, *et al.*,

Defendants.

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Case No. 6:19-CV-381-JDK-KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

This case was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636. On December 9, 2019, the Magistrate Judge issued a Report and Recommendation (Docket No. 13) recommending that the complaint be dismissed without prejudice. The Magistrate Judge also recommended that, to the extent Plaintiff challenges his criminal conviction, any such claims should be dismissed with prejudice to their being asserted again until the *Heck* conditions are met. *See Heck v. Humphrey*, 512 U.S. 477 (1994). A return receipt indicating delivery to Plaintiff was received by the Clerk on December 23, 2019. Docket No. 14.


This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days). Here, Plaintiff did not file objections in the prescribed period. The Court therefore reviews the Magistrate Judge's findings for clear error or abuse of discretion and reviews her legal conclusions to determine whether they

are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law").

Having reviewed the Magistrate Judge's Report and Recommendation, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. The Court therefore adopts the Report and Recommendation of the United States Magistrate Judge (Docket No. 13) as the findings of this Court.

Accordingly, it is hereby **ORDERED** that the Magistrate Judge's Report (Docket No. 13) be **ADOPTED** and that Plaintiff's civil rights action be **DISMISSED WITHOUT PREJUDICE**. Any claims wherein Plaintiff challenges his criminal conviction are **DISMISSED WITH PREJUDICE** to their being asserted again until the *Heck* conditions are met. Finally, it is **ORDERED** that any and all motions that may be pending in this civil action are hereby **DENIED**.

So **ORDERED** and **SIGNED** this **3rd** day of **April, 2020**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE